IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting
(Chapter VIII, Rule 32 (2) (b)
Description of Case

A.O. No. 291 of 2004
(Old No. 310 of 1991)

Date of decision :- 25-7-2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date :- 25-7-2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

A.O. No. 291 of 2004
(Old A.O.No. 310 of 1991)

1. State of U.P. through District Magistrate,
   Pauri Garhwal

2. Superintending Engineer,
   R.E.S. Pauri Garhwal ... Defendant/Appellants

Versus

Damodar Prasad Kala
S/o Late Murli Dhar Kala
R/o Jaunpur Kotdwar, Garhwal ... Claimant/ respondent

AND

Vijay Singh Rana
Driver Jeep No. UTS 2146
Office of R.E.S. Pauri Garhwal ... Proforma respondent

Sri Nand Prasad, learned Standing Counsel for the appellants

Hon'ble J.C.S. Rawat, J.

This is an appeal against the judgment and award dated 20th December, 1990 passed by Sri S.K. Mishra, the then Judge Motor Accident Claims Tribunal/District Judge, Pauri Garhwal in Motor Accident Claim Case No. 21 of 1989 titled Sri Damodar Prasad Kala Vs. U.P. State and others.

Brief facts for the disposal of this appeal are that a Claim Petition was filed under Section 110 of the then Motor Vehicles Act claiming therein a sum of Rs 1,50,000/- with interest as compensation for receiving serious injuries in an accident by the claimant/respondent while he was sitting as a pillion rider on scooter No. DHP-8745 and the scoter was hit by the offending Jeep No. UTS-2146 pertaining to the

Rural Engineering Service Department, Pauri Garhwal on 17.01.1989 at about 5:10 p.m. near P.W.D. Office at Kotdwar town. It was further alleged in the claim petition that the claimant/respondent was getting a salary of Rs. 655/- p.m. and he was aged about 46 years. The said offending jeep was being driven by the driver of the department rashly and negligently. Due to the rash and negligent driving, the offending vehicle hit the scooter which was being driven by Rajendra Prasad Gaud-PW2 an employee of the Forest Department and colleague of the injured. Due to the accident, the claimant/respondent became unconscious and he was admitted to the Kotdwar hospital from where he was referred to Meerut Medical College and thereafter Safdurjung hospital in Delhi where his right leg below the knee had been amputated.

The claim petition was contested by the department as well as by the driver. It was alleged therein that the driver-Vijay Singh Rana was neither driving the jeep nor he had caused any accident. It was also stated that the driver was at Pauri headquarter from 07.01.1989 to 17.01.1989 and he had reached from Pauri to Kotdwar at 5:15 p.m. It was further alleged that the said Jeep was standing in the office of the respondent/appellants at Kotdwar and the key had been taken by the driver. It was further alleged that the said offending jeep was not taken out or it was not on the road at the time of the accident. It was further alleged that after reaching at Kotdwar at 5:15 p.m., the driver took the offending jeep to

Moradabad on the next date. After the return from Moradabad, the said offending jeep was sent for the repairs to the garrage on 21st January, 1989. It was further alleged that the said vehicle as well as the driver of the vehicle had been implicated on the basis of suspicion. The injured-claimant/respondent was himself responsible for falling down from the scooter and no accident was caused by the offending jeep.

After the appraisal of the pleadings of the parties, the trial court framed the necessary issues.

After the appraisal of the evidence on record, the trial court came to the conclusion that the said offending jeep was involved in the accident and the driver of the said offending jeep was rash and negligent and hit the scooter No. DHP-8745. After considering the entire facts and circumstances, the trial court held that the claimant/respondent was entitled to get a sum of Rs. 80,000/- in all as compensation with interest @ 12% per annum from the date of the petition till the date of payment of the compensation.

I have heard learned Standing Counsel for the respondent/appellants at length. Notices were served upon the claimant/respondent. None is appearing on behalf of the claimant/respondent. The learned Standing Counsel contended that the learned Tribunal had also erred in law in not considering the fact that on 17.01.1989, the offending jeep was standing at the premises of the department and it was never plied on the road on the alleged date of the accident, i.e. 17.01.1989. It was further contended that there is no

mention in the F.I.R. that the incident took place by the offending jeep No. UTS-2146. The trial court erred in fixing the liability upon the department of the offending jeep. The learned Standing Counsel further contended that the learned Tribunal has also ignored the fact that the driver of the offending vehicle was at the headquarter Pauri Since 07.01.1989 till 17.01.1989 and the driver reached at Kotdwar at 5:30 p.m. As the claimant/respondent in this case was absent, hence with the held of the learned Standing Counsel I have gone through the entire evidence on record as well as the judgment of the trial court. The claimant/respondent had examined himself as PW-1 and he had supported the claim petition in his evidence. The claimant had also adduced the evidence of Rajendra Prasad Gaud-PW2 who was the owner of the scooter and who was driving the said scooter at the relevant time. The claimant/respondent was the pillion rider of the said scooter. It is also not disputed that Rajendra Prasad Gaud-PW2 was a colleague of the claimant/respondent. He proved the F.I.R. Ex.Ka-1. The claimant/respondent had also adduced the evidence of Dr. Ram Singh Rawat-PW3 who had examined the claimant/respondent immediately after the accident. The claimant/respondent also adduced the evidence of Anil Chandola-PW4 who was coming on the scooter behind the injured and he had seen the accident and he had also corroborated the testimony of the claimant/respondent. He had stated that one jeep

coming from Kotdwar on the wrong side and the driver of the said vehicle was rash and negligent. The said jeep hit the scooter and the claimant/respondent got injuries and he took him to the hospital in some another vehicle. The offending vehicle which hit the scooter ran away from the spot.

As against this the defendant/appellant examined Vijay Sing Rana-driver of the offending jeep was DW-1 who had stated in his evidence that he was not plying the said vehicle at the time of the accident. He had further stated that he reached at Kotdwar at 5:30 p.m. on 17.01.1989. It was also stated in his evidence that he was at Pauri headquarter from 6th January to 7th January, 1989. He reached from Pauri to Kotdwar by 5:15 p.m. on 17.01.1989. The said jeep itself was standing in his office at Kotdwar. He had not taken the jeep out of the office.

Now I have to examine whether the claimant/respondent had been able to prove whether the accident was caused by the offending jeep or it was caused due to fall of the scooter. Sri Damodar Prasad Kala-PW1, Rajendra Prasad Gaud-PW2 and Anil Chandola-PW4 had categorically stated in their evidence that the scooter was hit by a jeep and thereafter the injured sustained the injuries by the jeep and the injured was taken to the hospital and thereafter he was referred to the higher institution for better medical aid. The evidence of the claimant witnesses clearly reveals that the accident occurred at the spot and the claimant sustained the injuries by

jeep. It is a difficult question which will be dealt with later whether the offending jeep of the department was involved in the accident or not. The evidence of the oral witnesses are reliable and cogent and nothing had been elicited from their cross examination to discredit their testimony on the point that the accident occurred by the jeep and the driver of the said jeep was rash and negligent. The evidence of the witnesses is further corroborated by the evidence of Dr. Ram Singh Rawat-PW3 who had examined the injured at 5:30 p.m. on 17.01.1989. The injuries are as under :-

1. Crush injury of the right leg over lower half measuring 22 cm. x 17 cm. The lower part of the leg is tagged with upper part of the injury with tenders and posterior flap of skin. Underlying muscles and both bone are badly crushed. There is bleeding.

2. Abrasion multiple over an area 4 cm. x 3 cm. over an anterior surface of right knee measuring 1 cm. x 1 cm. to 2 cm. x 1.5 cm.

Injury No. 1 clearly reveals that the said injury is crush injury and that injury can be caused only by the crushing of a vehicle. Thus the claimant/respondent had succeeded in proving that the accident occurred due to the rash and negligent act of the driver of the offending jeep. It is not proved by the evidence that the claimant/respondent sustained the injuries due to the fall of the scooter at the spot.

Now I have to see whether the claimant/respondent had been able to prove his case that the accident was caused by the driver-Vijay Singh

Rana and the offending jeep bearing No. UTS-2146 was involved in this matter or not. The claimant/respondent had adduced the evidence of himself and Rajendra Prasad Gaud-PW2. They have categorically stated that the claimant/respondent was seriously injured in the accident while the scooter No. DHP-8745 on which the claimant/respondent was a pillion rider was being driven by Rajendra Prasad Gaud-PW2 which was being hit by the said offending jeep belonging to the State Government and driven by Vijay Singh Rana-driver on 17.01.1989 at about 5:10 p.m. near P.W.D. office Kotdwar town. The report was lodged to the police station and thereafter the injured was admitted to the hospital. Ultimately his one right leg below the knee had been amputated. Anil Chandola-PW4 had also corroborated the testimony of the claimant's witnesses. It was pointed out that Anil Chandola-PW4 had stated in his deposition that he could not note down the number of the jeep and he could not see the driver of the said vehicle as such, the liability could not be fastened upon the appellant-respondents. Anil Chandola-PW4 had given natural evidence that when accident occurred and somebody found injured laying on the road in a serious injured condition, he would like to help the injured rather than to see or to flee to catch hold the driver of the jeep. Anil Chandola-PW4, therefore, in a natural and genuine manner had brought to the injured to the hospital and thereafter he lodged the report without any exaggeration, twist and fact. If he would have seen

the driver and noticed the number of the vehicle, he would have brought it on record and should have reported the matter in the F.I.R. This conduct of the Anil Chandola-PW4 is natural and genuine.

Now the question arose that the F.I.R. which was alleged to have been signed by Rajendra Singh Gaud-PW2 did not mention the vehicle number and the name of the driver in the said report. It is true that Ex.Ka.-1 chick report which had been handed over to the police did not contain the number of the vehicle as well as the name of the driver. Rajendra Prasad Gaud-PW2 appeared in evidence before the court below and he had stated in his evidence that he had also sustained the injuries in the said accident. He had also admitted that he did not indicate the number of the vehicle in the F.I.R. He had also stated after the accident the injured and Rajendra Prasad Gaud-PW2 were taken to the hospital. They were in a stage of unconsciousness. He had further stated in his evidence that he had stated this fact to the police when the said report was written and he stated the number to the writer of the report. But he had stated that he was not fully conscious at the time of the recording of the report. He had further stated in his evidence that when the injured as well as he fell on the ground due to the accident, he had seen the number of the jeep and he had recognized the driver of the said jeep. It is also stated claimant/respondent that the accident occurred due to the rash and negligent driving of Vijay Singh Rana-driver of the respondent/appellants. In the cross

examination he had also stated that he was informed by Rajendra Prasad Gaud-PW2 that the vehicle was driven by Vijay Singh Rana. As against this the driver of the vehicle was produced before the court below as DW1. He had categorically stated in his evidence that he was at Pauri headquarter right from 06.01.1989 to 17.01.1989 and he reached from Pauri to Kotdwar at 5:15 p.m. It is also in the evidence that the keys of the said jeep was with the driver of the offending jeep which is standing in his office at Kotdwar and he had further stated that the said jeep was never plied by him or by any other persons. The log book of the said jeep was produced before the court. According to the version of the driver, the driver reached Kotdwar town only after 5 minutes of the alleged accident. The driver was confronted with the various entries of the log book. It is in the evidence that 25 liters of petrol was filled in the said vehicle on 13.01.1989 and the entries of the log book was made in this respects. Vijay Singh Rana-driver DW1 and Mr. M.K. Jain-Assistant Engineer-DW2 could not explain as to why the entries of the purchase of the petrol was made on 13.01.1989 when the jeep was stationary and the jeep was not with the driver who was alleged to have been at Pauri from 07.01.1989 to 17.01.1989. This fact also take inference that the theory propounded by the driver is not believable. The filling of the petrol on 31.01.1989 clearly falsify the statement of the driver that he was not present at Kotdwar and the vehicle was stationary at Kotdwar office and the keys of the jeep was with the

driver at Pauri. The second entry of the purchasing of the petrol which was purchased on 17.01.1989 was made on the log book on 18.01.1989. It is revealed from the perusal of the log book as stated by Assistant Enginer-DW2 that the log book which was summoned in the court below show that the figure was changed to 13 and it is admitted by the Assistant Engineer. Vijay Singh Rana-DW1 driver of the vehicle was also confronted with the purchase of the petrol on 17.01.1989. He tried to explain that the vehicle was not in a condition which could be started. He brought the petrol on the jarkin on 17.01.1989 and he filled it in the jeep because there was no assisting hand available at the spot to push the vehicle on 17.01.1989. If the purchase was made on 17.01.1989 why the entry was not made on the log book on 17.01.1989 itself. It further leads to take inference that the driver is hiding something from the court. Secondly, the Assistant Enginer-DW2 had stated to the police that the driver was in his office at 4:00 p.m. Thereafter, he had gone away to market. He denied in his statement in the court and he could not give any explanation as to why this statement had been recorded by the investigating officer of the criminal case. He also stated to the police that Vijay Singh Rana was met in his office at 5:30 p.m. Rajendra Prasad Gaud-PW2 had stated that Vijay Singh Rana-driver came to him and he tried to get it compromise. The statement of Rajendra Prasad Gaud-PW2 is also credible and cogent. The evidence of the claimant is

credible and cogent and I do not find any reason to disbelieve the evidence of the claimant/respondent.

It is also revealed from the record that the driver was also facing trial for causing the injury to the claimant/respondent and the Investigating Officer had come to the conclusion that the driver of the said vehicle was rash and negligent and also held that the said offending vehicle was involved in the accident. This also leads to take inference that the offending vehicle hit the claimant/respondent by which he received the injuries. Assistant Engineer-DW2 had stated that the driver Vijay Singh Rana came to Kotdwar at 5:30 p.m. At that time, he was sitting alone in his office. He had further stated that all the employees had gone away from the office. The learned Tribunal has right observed that the facts and circumstances show that the driver must have took the jeep to the petrol pump on 17.01.1989. The detailed cross examination of driver, therefore, clearly revealed that he did drive the vehicle and gave wrong and false statement and caused the accident. It is also in the evidence that no department inquiry was initiated against the driver. It was obligatory on the part of Assistant Engineer-DW2 or the Executive Engineer that when it was alleged that the said vehicle was involved in the accident, the departmental fact findings inquiry against the driver should have been initiated. Non initiation of the departmental inquiry against the driver further leads to take inference that the officers and driver were in hand and glove in this matter and the

department was trying to manipulate in order to avoid responsibility of the driver as well as of the department. The trial court had right held that there is no reason to disbelieve the statement of the claimant/respondent and his witnesses regarding the negligent and fast driving of the jeep by the government jeep driver. The quantum of compensation was not challenged by the appellant. No other point urged before me. I am completely in agreement with the findings recorded by the learned Tribunal.

In view of the foregoing discussion, I come to the conclusion that the appeal devoids of merit and is liable to be dismissed and the same is dismissed accordingly.

(J.C.S. Rawat, J.)

25th July, 2006
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